

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MONSANTO COMPANY and  
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

v.

E.I. DU PONT DE NEMOURS AND CO. and  
PIONEER HI-BRED INTERNATIONAL, INC.,

Defendants.

Case No. 09-cv-0686 (ERW)

**DEFENDANTS' FURTHER STATUS REPORT REGARDING THE PARTIES' MEET  
AND CONFER EFFORTS PURSUANT TO THE COURT'S MARCH 18, 2011 ORDER**

Having reviewed the submission by Monsanto on March 22, 2011, Defendants have concluded that Monsanto has no interest in engaging in further good faith meet and confer discussions regarding the outstanding issues under the Court's March 18 Order, and Defendants therefore respectfully request that they be allowed to make a submission to the Court, by Thursday, March 24, 2011, addressing those outstanding issues.

The reasons for Defendants' conclusion that Monsanto has no interest in engaging in further good faith meet and confer discussions include the following:

1. The parties' meet and confer discussions on March 21, 2011 started at 4 p.m. Central to accommodate Mr. Lombardi based on Monsanto's stated position that the lead counsel for the parties needed to participate in these discussions, and then these discussions were cut short due to what Mr. Lombardi said were his other commitments. Mr. Lombardi suggested, however, and Defendants agreed, that Mr. Lombardi and Ms. Ben-Ami should continue their discussions by telephone on Wednesday morning, March 23. Mr. Lombardi indicated that these discussions would need to start early due to his other commitments beginning at 10:00 a.m. Central. Monsanto's submission with the Court does not even acknowledge these

scheduled discussions and instead requests an in-person conference that was never discussed by the parties.<sup>1</sup>

2. Although the parties had agreed to continue their meet-and-confer discussions, Monsanto's submission makes clear that its positions are not subject to further discussion and negotiation. As a result, Defendants believe these issues will need to be resolved by the Court.
3. Monsanto's submission includes numerous false statements about, among other things, the substance of the parties' meet and confer discussions on Monday, March 21. Monsanto's submission also takes the position that these discovery issues can be resolved without doing violence to the existing discovery deadlines and trial date in the Court's case management order. Defendants will address this issue in its forthcoming submission and provide specific proposals to the Court, but Defendants note that this subject was not discussed during the parties' March 21 conference call.
4. Monsanto's position does not acknowledge the several deficiencies in Monsanto's production highlighted in the Court's March 18 Order, and fails to respect the impact and prejudice those deficiencies have had on this litigation. Defendants believe that further discovery and compliance ordered by the Court is central to the fair adjudication of this lawsuit. Defendants will therefore respectfully request that the Court compel Monsanto to remedy those deficiencies in production, as Monsanto has clearly demonstrated no willingness to do so without a further Court Order.

For the reasons set forth herein, Defendants request that they be allowed to make a submission to the Court, by Thursday, March 24, 2011, addressing the outstanding issues under the March 18 Order.

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<sup>1</sup> Numerous counsel for Defendants (including Ms. Ben-Ami, Mr. Jagoe, Mr. Silverman, Ms. Wacker and Mr. Goerisch) participated in the parties' March 21 telephone conference and heard these representations by Monsanto's counsel.

Dated: March 23, 2011

Respectfully submitted,

**LEWIS, RICE & FINGERSH, L.C.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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